

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

Writ Petition No. 763 (S/S) of 2007

Geeta Naithani W/o Sanjeev Naithani
Assistant Teacher Purva Madhyamik Vidyalaya, Badowala (Jauli)
Doiwala, Dehradun -----Petitioner

Versus

1. State of Uttarakhand through Secretary Basic Education
Dehradun
2. Additional Basic Education Officer, Dehradun
3. District Education Officer, Dehradun
4. Principal Purva Madhyamik Vidyalaya Baronwala Dehradun
5. Director Education State of Uttaranchal, Dehradun
-----Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri M.C. Pant, learned counsel for the petitioner and
Sri N.P. Shah, learned Standing Counsel State of Uttarakhand for
the respondents.

By means of this writ petition, the petitioner has prayed for
the following reliefs:

1. Issue writ, rule, order or direction in the nature of certiorari
quashing the order dated 23.06.2007 (Annexure 1).
2. Issue writ, rule or direction in the nature of mandamus
commanding the respondents not to disturb the petitioner
from her present place of working at Badonwala (Jolly) and
further to pay her salary with all consequential benefits
regularly in her present place of posting.
3. Issue any other order or direction, which this Hon'ble Court
may deem fit and proper under the circumstances of the
case.
4. Award cost of the petition in favour of the petitioner.

By the impugned order dated 23.06.2007, the petitioner who was working as Assistant Teacher, Junior High School at Badowala (Jauli) Doiwala, Dehradun has been transferred to Junior High School Hanol, Chakrata on the ground that the petitioner was in excess of standard limit of teachers' strength in the institution.

Learned counsel for the petitioner has submitted that it is not a transfer order, but it is an adjustment and as such the principle applicable in the case of transfer cannot apply in the case of adjustment. Learned counsel for the petitioner has further submitted that petitioner was earlier promoted from the post of Assistant Teacher Primary School to the post of Assistant Teacher Junior High School. Later on, the said promotion order was cancelled by the respondents. Aggrieved with that order, the petitioner has preferred writ petition and in the writ petition, the Hon'ble Court has granted stay order in favour of the petitioner. Since the petitioner has been promoted and is working under the order of this Court, he should not have been transferred to any other place.

I do not find any force in the submission of the learned counsel for the petitioner. Though in the impugned order, it is stated that the petitioner is being adjusted it is, in my opinion, is a transfer order. The petitioner has been transferred though the word '*adjustment*' has been mentioned in the impugned order.

Learned counsel for the petitioner has also submitted that the order is on the face is mala fide, but he could not show any document which shows mala fide.

It is well settled law that the transfer order cannot be challenged except on the ground of mala fide or when the transfer order is passed against the statutory rules or the same has been

passed by the incompetent authority or it comes within the category of frequent transfer. None of the ground is available to the petitioner in the present case. The petitioner could not show that the transfer order has been passed mala fide or it is against the statutory rules. It is also not disputed that the order has been passed by the competent authority and it does not come within the category of frequent transfer.

I do not find any ground to interfere with the impugned transfer order. This Court under Article 226 of the Constitution of India cannot decide whether the petitioner was working in excess of the sanctioned strength in the institution or not. This has to be seen by the authorities concerned.

The petitioner for that purpose may make a representation before the appropriate authority raising all his grievances that he was not working in excess of the sanctioned strength of the teachers in the institution and the transfer order has been passed illegally. In case, such a representation is made before the appropriate authority, it is expected from the authority concerned that he/she will take decision on the representation of the petitioner within a period of three weeks from the date of production of a certified copy of this order along with the representation, if moved by the petitioner.

With this direction, the writ petition is finally disposed of. All the pending application stand disposed of.

(M.M. Ghildiyal, J.)

02.07.2007
VKS